TD Banknorth Inc.

January 18, 2006

Office of the Comptroller of the Currency
250 E Street, SW., Mail Stop 1 – 5
Washington, DC 20219
ATTN Docket No. 05-16

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
ATTN: Docket No. R-1238

RE: ANPR for Risk-Based Capital Guidelines: Capital Adequacy Guidelines: Capital Maintenance: Domestic Capital Modification.

Dear Sir/Madam:

TD Banknorth appreciates the opportunity to comment on the ANPR on capital adequacy guidelines, commonly referred to by banking industry participants as BASEL 1A or BASEL 1.5. This letter responds to the Agencies' request for broad comment on possible modifications to the proposed risk-based capital standards.

Introduction:

Based on TD Banknorth's review of the ANPR, we do not think it would be wise to attempt to set a single standard for such an adverse group of banks. This could result in significant regulatory burdens for some of the less complex banks in the country.

TD Banknorth would recommend that the agencies consider the possibility of permitting some banking organizations to elect to continue to use the existing risk-based capital framework for determining minimum risk-based capital requirements.

With the above comments in mind, TD Banknorth would recommend that serious consideration be given to the Multi-Tier Approach advocated by the RMA.

In addition to the introductory comments, TD Banknorth would also like to comment on some of the other major categories detailed in the ANPR.

- **Increasing the Number of Risk Weight Categories:**

  We have no objection to this in principle, so long as the added risk weight categories are based on sound empirical support.

- **Use of External Credit Ratings:**

  Very few commercial loans booked by community banks are to companies with a NRSRO rating so the overall impact of this change would be minimal and would provide little or no capital relief.

However, relative to the use of external credit ratings, we offer the following thoughts:

The 'illustrative risk weights" (for borrowers at BB+ or below) are inconsistent with the practices of most commercial banks in the U.S. to which Basel IA would apply (i.e., small and medium-size banks). For example:

1. Most loans at those banks are too small or medium-size businesses that are not rated, but which would be below-investment grade if they were.

2. The illustrative risk weights are substantially higher for exposures rated below BBB- than are the weightings under the Standardized Approach of Basel II. The Basel II weightings are more reasonable.

3. It does not make sense that a loan to a rated borrower would carry a risk weight of 350%, while one to a similarly creditworthy (or even less creditworthy) non-rated borrower would be weighted at 100%.

   Some community banks' risk rating systems provide guidance regarding S & P or Moodys ratings as a part of the overall credit risk evaluation. Using that guidance, BB+/BB is generally considered 'Satisfactory/Better than Average Risk' yet according to the illustrative risk weights of this proposal, that type of credit would have a risk weight of 200%. A B- rating is considered 'Generally Acceptable/Bankable with Care' and the risk weight of 350% seems extreme for that type of credit risk.

4. The proposal would provide a disincentive for borrowers to seek NRSRO ratings.

- **Expand Eligible Financial Collateral and Guarantors:**

  To use an expanded list of collateral, banking organizations would be required to have collateral management systems that can track the collateral. These systems would also be required to be able to readily determine the value of the collateral that would be realizable by the bank. While this approach may be overly burdensome for some small banks, it does represent sound banking principles and, on an opt-in basis, it would not appear to be unreasonable.

- **Expand Eligible Guarantors:**

  We have no objection to this principle.

- **First and Second Lien One-to-Four Family Residential Mortgages:**

  The use of LTV to determine risk weights for first lien one-to-four family residential mortgages would be acceptable, but the necessity to update values for the residential portfolio on a periodic basis would put significant burden on banks.

  The alternative method that has been proposed determines risk weight on a combination of a mortgage's LTV ratio and other risk factors, such as the borrower's credit assessment or debt-to-income ratio. This would be a better alternative in our opinion, as it would provide an all-inclusive risk perspective. We would recommend the use of a cross-tab matrix to use multiple factors [LTV, DTI & FICO Scores]. Risk weighting should be reduced by that portion that is secured by a third-party insurance program. This Risk Weight option could also be applied to HELOC as well.

The ANPR does not make any distinction for second homes versus a primary residence. It would stand to reason that a second home would carry more inherent risk than a primary residence and therefore should have a heightened "starting point" for risk weighting.

In addition, we would propose that non-traditional mortgage products not be treated in the same matrix as traditional mortgages due to the unique risks of those products.

- **Multi-Family Residential Mortgages:**

  No comment.

- **Other Retail Exposures:**

  We are in general agreement with the items outlined in the ANPR, although risk weighting should be tiered based on a combination of several risk factors.

- **Short-Term Commitments:**

  We believe that the proposal to apply a 10 percent CCF on certain short-term commitments requires more concise definition and a broader discussion of exceptions. As generally understood by the industry, the term "short-term commitments with an original maturity of one year or less" refers to traditional lines of credit (often called "364-day lines"). Such lines are usually seen as having an element of "commitment" because the bank would not normally cancel the line in the absence of significant negative events or changes in the financial condition of the borrower.

  The proposal states that "exceptions would be made for commitments that are unconditionally cancelable at any time by the banking organization without prior notice (i.e. credit cards); these commitments would continue to be eligible for a zero percent CCF." We feel that the proposal should specifically reference discretionary lines of credit, money market lines and guidance lines as additional exceptions eligible for zero percent CCF. While such facilities may be advised to the customer and recorded on bank systems of record for control purposes, they are documented in a way that makes it clear future borrowings are at the sole discretion of the lending institution. In each instance, the customer must make a request and the bank may, or may not, decide to provide credit (or bid to provide credit in the case of money market lines). Such facilities, therefore, should not be considered to be "commitments" in the usual sense of the word, but do not fit the current "exception" language in the proposal.

- **Loans 90 Days or More Past Due or in Nonaccrual:**

  We believe that the portion of exposure net of associated reserves (based on a conservative, liquidation basis) should not have a higher risk weight than an average loan, since the net amount should reflect the balance of the loan with minimal risk of loss. In most cases a non-performing loan is charged down or reserved to the level that is supported by some discounted collateral value. Based on that structural support, the risk weight should not be increased. Furthermore, the proposal would increase administrative burden (record keeping showing a higher gross capital for impaired loans reduced by the ALLL offset) for no real purpose. We recommend that this section of the proposal be dropped since adequate ALLL provisioning for such loans is strictly enforced by regulators.

If this proposal should survive, then we would recommend the following:

1. Most commercial loans that are 90+ days delinquent and accruing have simply matured and are in the process of being renewed. Such loans are not appropriate for higher risk weights; the proposal should apply only to loans that are actually impaired.

2. The amount of the exposure assigned to a higher risk category should be reduced, not only by reserves, but also by qualifying collateral and guarantees.

- **Commercial Real Estate (CRE) Exposures:**

  Our concerns relating to Commercial Real Estate Exposures are as follows:

1. Competitive issues. This proposal would make it difficult for banks to compete with non-bank lenders.

2. It is unclear whether this proposal is meant to apply only to construction loans or to permanent financing as well. In other words, much depends on the definition of "acquisition, development, and construction."

   If the final rule does apply to permanent financing, community and regional banks would be at a significant competitive disadvantage. Non-banks are now competing head to head in this market and are no longer waiting for projects to stabilize. With the potential of a 350% capital charge, banks would no longer be able to compete in this market, and there could be an unintended adverse impact on commercial real estate markets as well.

3. Do the agencies have empirical evidence to support a requirement for higher risk weights?

4. The proposal suggests a 15% (or some other) cash equity requirement to avoid a higher-than-100% risk weight. Is that intended to be an ongoing requirement? Would appreciation in the property (per independent appraisal), enable borrowers to take cash equity out of the deal? If not, this would also put banks at a competitive disadvantage.

5. In practice, limited initial cash equity is frequently mitigated by other aspects of the loan structure (such as pre-sales requirements, guarantees, or other collateral). Failure to consider such mitigants would result in limiting available credit to some creditworthy applicants.

6. The Agencies propose exempting ADC loans backed by substantial borrower equity from the aforementioned higher risk weightings and assigning these loans to the 100% risk-weight category. The proposal, however, does not address the possibility of lowering the risk-weighting for CRE loans not considered higher risk that are also supported by substantial equity. This suggests an absolute floor of 100% risk-weight for CRE loans, yet the Agencies are acknowledging that substantial equity qualifies as an acceptable vehicle for lowering a risk-weight for ADC loans. Based on the proposal of accepting substantial equity as a mitigating factor, the risk-weight should be able to move up or down based on this factor.

7. The paper asks for comment on alternative ways to make the risk-weight more risk sensitive. Risk drivers that could be considered include:

- Loan to value
- Debt Service Coverage
- Market
- End of term LTV
- Lease Rollover
- Management
- Location
- Tenant Credit (for retail loans) and RevPAR (for Hotels)

However, any proposal to add such drivers must be balanced with the additional complexity and burden they introduce.

The ANPR discusses the concept of a higher risk weighting for certain ADC loans based on "longstanding supervisory concerns," yet there is no detail provided on those concerns relative to community banks and their existing policies and procedures. It is difficult to comment on this proposal without understanding the referenced concerns.

- **Small Business Loans:**

Relative to the approaches for improving risk sensitivity of the risk-based capital treatment for small business loans, we provide the following comments:

1. What is the factual basis for assigning a lower risk weight to loans under $1 million? Our experience is that smaller loans have a higher PD. Is the proposal merely based on a principle of diversification?

2. The subjective standard of requiring "an acceptable assessment" of collateral and borrower creditworthiness may lead to inconsistency from bank to bank. What is "acceptable"?

3. Same objection applies to the possibility of lowering risk weights based on a credit assessment of the principals of the small business.

Without further empirical support, we would not recommend greater risk sensitivity for small business loans.

- **Early Amortization:**

No comment.

- **Overall Cost to Financial Institutions:**

The following elements of the proposal would require most small banks and many medium-size banks to increase data storage and retrieval capabilities significantly:

- Using credit risk measures for assigning risk weights to residential mortgages
- Modifying risk-based capital requirements for certain commercial real estate exposures.

- Increasing the risk-based capital sensitivity for other types of retail, multifamily, small business, and commercial exposures.
- Any other provisions of a final rule that would requirement reporting of LTV, DTI, credit scores.

Increasing these capabilities will be very costly and burdensome, potentially requiring small/medium-size banks to establish credit data marts. The initial cost of a data mart could easily exceed $5 million; additional annual operating costs would be required, as well.

- **Reporting Requirements:**

  No comment.

TD Banknorth appreciates the opportunity to comment on the ANPR and looks forward to the continued development of this important rule.

Thank you.

Sincerely,

Edward P. Schreiber
EVP & Chief Risk Officer

John W. Fridlington
EVP and Senior Lender

EPS/jl